

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Appeals for
the Federal Circuit and the United
States Court of International Trade

Vol. 17

June 29, 1983

No. 26

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 83-128)

Bonds

Approval and discontinuance of bonds on Customs Form 7587 for the control of Instruments of International Traffic of a kind specified in section 10.41a of the Customs Regulations

Bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: June 8, 1983.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Aerospatiale Helicopter Corp., 2701 Forum Drive, Grand Prairie, TX; Washington International Ins. Co. (PB 5/7/81) D 5/5/83	May 7, 1981	May 14, 1981	New York Seaport \$10,000
American Maritime Co., Suite 902, Public Ledger, Bldg., 6th & Chestnut Sts., Philadelphia, PA; Ins. Co. of North America.	Sept. 17, 1982	Sept. 17, 1982	Savannah, GA \$10,000
Autoliners, Inc., 100 E. 42nd St., 16th Floor, New York, NY; Washington International Ins. Co.	May 11, 1983	May 13, 1983	Balt., MD \$10,000
Brostrom Shipping Co., Inc., 636 Fifth Ave., New York, NY; American Motorists Ins. Co.	May 3, 1983	May 9, 1983	New York Seaport \$20,000
Canadian Transport Co., Ltd., 1075 W. Georgia Vancouver, B.C., Canada; Washington International Ins. Co.	Apr. 1, 1983	Apr. 21, 1983	Seattle, WA \$10,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Coastal Canvas Products Co., Inc., 6A Industry Dr., Savannah, GA; St. Paul Fire & Marine Ins. Co.	Nov. 15, 1982	Nov. 15, 1982	Savannah, GA \$10,000
Henry I. Daty, Inc., 122 E. 42nd St., New York, NY; St. Paul Fire & Marine Ins. Co.	Dec. 29, 1982	Dec. 29, 1982	Savannah, GA \$10,000
H & A Trading Co., P.O. Box 11703, Caparra Heights Station, San Juan, PR; Seaboard Surety Co.	Apr. 26, 1983	May 2, 1983	San Juan, PR \$10,000
Kanematsu-Gosho (USA) Inc., One World Trade Center, New York, NY; St. Paul Fire & Marine Ins. Co. (PB 4/5/77) D 4/29/83	Apr. 1, 1983	Apr. 11, 1983	Savannah, GA \$10,000
Leffler & Malmros Inc., 636 Fifth Ave., New York, NY; Federal Ins. Co. D 5/3/83	Feb. 14, 1975	Feb. 14, 1975	New York Seaport \$10,000
Logan Steamship Agency Inc., 250 N. Water St., P.O. Box 2881, Mobile, AL; St. Paul Fire & Marine Ins. Co. D 5/10/83	Apr. 9, 1980	Apr. 10, 1980	Mobile, AL \$10,000
Emilio Antunano Garcia, dba: Manantial La Marquesa, Inc., 652 Roosevelt St., Miramar Santurce, PR; C.N.A. Casualty of PR. (PB 11/28/77) D 5/8/83 ¹	May 9, 1983	May 9, 1983	San Juan, PR \$10,000
National Sea Products Ltd., Halifax, Nova Scotia, Canada; Old Republic Ins. Co.	May 5, 1983	May 9, 1983	Portland, ME \$10,000
Nautilus Leasing Services, 100 California St., Suite 800, San Francisco, CA; Washington International Ins. Co.	Mar. 18, 1983	Mar. 22, 1983	San Francisco, CA \$10,000
Oceans Technology Co., 559 Holmes Blvd., Gretna, LA; Old Republic Ins. Co. D 5/17/83	Apr. 6, 1981	Apr. 7, 1981	New Orleans, LA \$10,000
SCAC Transport USA, Inc., 150-04 New York Blvd., Jamaica, NY; Investors Ins. Co. of America.	May 13, 1983	May 16, 1983	New York Seaport \$10,000
Sherex Chemical Co., Inc., P.O. Box 646, Dublin, OH; Investors Ins. Co. of America.	May 24, 1983	May 25, 1983	New York Seaport \$10,000
Southern Cross Overseas Agency Inc., 99 West Essex St., Maywood, NJ; Washington International Ins. Co.	Apr. 22, 1983	Apr. 27, 1983	New York Seaport \$50,000

¹ Principal is Emilio Antuanano, dba: Agua Mineral La Marquesa; Surety is Continental Casualty Co.

(T.D. 83-129)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to Section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
May 2-6, 1983	\$0.000015
Chile peso:	
May 2-5, 1983 .....	.013333
May 6, 1983 .....	.013245
Colombia peso:	
May 2-5, 1983 .....	.013245
May 6, 1983 .....	.013172
Greece drachma:	
May 2-3, 1983 .....	.011891
May 4-6, 1983 .....	.011905
Indonesia rupiah:	
May 2-5, 1983 .....	.001031
May 6, 1983 .....	.001033
Israel shekel:	
May 2-4, 1983 .....	.023742
May 5-6, 1983 .....	.023430
Peru sol:	
May 2-5, 1983 .....	.000742
May 6, 1983 .....	.000729
South Korea won:	
May 2-6, 1983 .....	.001304

(LIQ-03-01 S:C:I)

Dated: May 6, 1983.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-130)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to Section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
May 9-13, 1983	\$0.000015
Chile peso:	
May 9-10, 1983 .....	.013245
May 11, 1983 .....	.013421
May 12, 1983 .....	.013245
May 13, 1983 .....	.013333
Colombia peso:	
May 9-10, 1983 .....	.013172
May 11, 1983 .....	.013189
May 12, 1983 .....	.013172
May 13, 1983 .....	.013127
Greece drachma:	
May 9, 1983 .....	.011898
May 10, 1983 .....	.011905
May 11, 1983 .....	.011947
May 12, 1983 .....	.011891
May 13, 1983 .....	.011891
Indonesia rupiah:	
May 9-10, 1983 .....	.001033
May 11, 1983 .....	.001036
May 12, 1983 .....	.001033
May 13, 1983 .....	.001034
Israel shekel:	
May 9-10, 1983 .....	.023261
May 10, 1983 .....	.023175
May 11, 1983 .....	.023321
May 12, 1983 .....	.023154
May 13, 1983 .....	.023036
Peru sol:	
May 9, 1983 .....	.000729
May 10, 1983 .....	.000729
May 11, 1983 .....	.000732

May 12, 1983 .....	.000729
May 13, 1983 .....	.000717
South Korea won:	
May 9-13, 1983	\$0.001304

(LIQ-03-01 S:C:I)

Dated: May 13, 1983.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-131)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to Section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:

May 16-19, 1983	\$0.000015
May 20, 1983 .....	.000013

Chile peso:

May 16-19, 1983 .....	.013333
May 20, 1983 .....	.013193

Colombia peso:

May 16-19, 1983 .....	.013127
May 20, 1983 .....	.013057

Greece drachma:

May 16-17, 1983 .....	.011891
May 18, 1983 .....	.011898
May 19, 1983 .....	.011891
May 20, 1983 .....	.011876

Indonesia rupiah:

May 16-19, 1983 .....	.001034
May 20, 1983 .....	.001031

Israel shekel:

May 16, 1983 .....	.022957
May 17, 1983 .....	.022873
May 18, 1983 .....	.022873

May 19, 1983 .....	.022800
May 20, 1983 .....	.022732
Peru sol:	
May 16-19, 1983 .....	.000717
May 20, 1983 .....	.000704
South Korea won:	
May 16-20, 1983 .....	.001304

(LIQ-03-01 S:C:I)

Dated: May 20, 1983.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-132)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to Section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Brazil cruzeiro:	
May 23-26, 1983	\$0.002154
May 27, 1983 .....	.002026
Hong Kong dollar:	
May 24 and 27, 1983 .....	.141243
United Kingdom pound:	
May 23, 1983	1.5562
May 24, 1983	1.5677
May 25, 1983	1.5854
May 26, 1983	1.6020
May 27, 1983	1.6018
Venezuela bolivar:	
May 23-26, 1983 .....	.098522
May 27, 1983 .....	.098039

(LIQ-03-01 S:C:I)

Dated: May 27, 1983.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-133)

Foreign Currencies—Daily Rates for Countries Not on Quarterly
 List

The Federal Reserve Bank of New York, pursuant to Section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

May 30, 1983 Holiday, use Rates for May 27, 1983

Argentina peso:	
May 31, 1983	\$0.000013
Chile peso:	
May 31, 1983 .....	.013072
Colombia peso:	
May 31, 1983 .....	.012999
Greece drachma:	
May 31, 1983 .....	.011848
Indonesia rupiah:	
May 31, 1983 .....	.001030
Israel shekel:	
May 31, 1983 .....	.022287
Peru sol:	
May 31, 1983 .....	.000692
South Korea won:	
May 31, 1983 .....	.001297

(LIQ-03-01 S:C:I)

Dated: May 31, 1983.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

BON-3-10

GEORGE C. STEUART
(For Marilyn G. Morrison, Director,
Carriers, Drawback and Bonds Division.)

(T.D. 83-134)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to Section 522(C), Tariff Act of 1930, as amended (31 USC 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 83-90 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruzeiro:

May 2-4, 1983	\$0.002198
May 5-6, 1983 .....	.002154

United Kingdom pound:

May 2, 1983	\$1.5707
May 3, 1983	1.5782
May 4, 1983	1.5787
May 5, 1983	1.5780
May 6, 1983	1.5790

Venezuela bolivar:

May 2-5, 1983	\$0.099010
May 6, 1983 .....	.090909

(LIQ-03-01 S:C:I)

Dated: May 6, 1983.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-135)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to Section 522(C), Tariff Act of 1930, as amended (31 USC 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 83-90 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruzeiro:	
May 9-10, 1983	\$0.002154
May 11, 1983 .....	.002165
May 12-13, 1983 .....	.002154
Mexico peso:	
May 11, 1983 .....	.006734
United Kingdom pound:	
May 9, 1983	1.5680
May 10, 1983	1.5645
May 11, 1983	1.5685
May 12, 1983	1.5681
May 13, 1983	1.5665
Venezuela bolivar:	
May 9-10, 1983 .....	.090909
May 11, 1983 .....	.095238
May 12, 1983 .....	.099010
May 13, 1983 .....	.100503

(LIQ-03-01 S:C:I)

Dated: May 13, 1983.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-136)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to Section 522(C), Tariff Act of 1930, as amended

(31 USC 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 83-90 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruzeiro:	
May 16-20, 1983	\$0.002154
United Kingdom pound:	
May 16, 1983	1.5605
May 17, 1983	1.5540
May 18, 1983	1.5585
May 19, 1983	1.5562
Venezuela bolivar:	
May 16-20, 1983 .....	.100503
May 20, 1983 .....	.099502

(LIQ-03-01 S.C.I.)

Dated: May 20, 1983.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-137)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to Section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
May 23-27, 1983	\$0.000013
Chile peso:	
May 23-26, 1983 .....	.013193
May 27, 1983 .....	.013072
Colombia peso:	
May 23-26, 1983 .....	.013057
May 27, 1983 .....	.012999

Greece drachma:	
May 23, 1983	\$0.011876
May 24, 1983 .....	.011862
May 25-27, 1983 .....	.011876
Indonesia rupiah:	
May 23-26, 1983 .....	.001031
May 27, 1983 .....	.001030
Israel shekel:	
May 23, 1983 .....	.022748
May 24, 1983 .....	.022738
May 25, 1983 .....	.022640
May 26, 1983 .....	.022548
May 27, 1983 .....	.022497
Peru sol:	
May 23-26, 1983 .....	.000704
May 27, 1983 .....	.000692
South Korea won:	
May 23, 1983 .....	.001300
May 24-26, 1983 .....	.001299
May 27, 1983 .....	.001297

(LIQ-03-01 S:C:I)

Dated: May 27, 1983.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-138)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to Section 522(C), Tariff Act of 1930, as amended (31 USC 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 83-90 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

May 30, 1983 Holiday, Use Rates for May 27, 1983

Brazil cruzeiro:	
May 31, 1983	\$0.002026
Hong Kong dollar:	
May 31, 1983	\$0.139958
United Kingdom pound:	
May 31, 1983	\$1.6005
Venezuela bolivar:	
May 31, 1983	\$0.098039

(LIQ-03-01 S:C:D)

Dated: May 31, 1983.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

19 CFR Part 146

(T.D. 83-139)

Customs Regulations Amendments Relating to the Transfer of
Merchandise From a Foreign-Trade Zone to a Customs Bonded
Warehouse

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to permit the transfer of zone-restricted merchandise from a foreign-trade zone to a Customs bonded warehouse pending exportation, without obtaining approval of the Foreign-Trade Zones Board, Department of Commerce. This change is being made because elimination of this unnecessary requirement will expedite the transfer process.

EFFECTIVE DATE: July 18, 1983.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: William D. Lawlor, Carriers, Drawback and Bonds Division (202-566-5856); Operational Aspects: John R. Holl, Office of Cargo Enforcement and Facilitation (202-566-8151); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Foreign-trade zones (zones) are areas within the United States (but outside of the "Customs territory" of the United States, as defined in section 146.1, Customs Regulations (10 CFR 146.1)), where foreign or domestic merchandise may be brought for manipulation, manufacture, assembly, or other processing, or for storage or exhibition, provided that these operations are not otherwise prohibited by law. Foreign merchandise may be brought into a zone without being subject to the usual Customs entry procedures and payment of duty. Foreign or domestic merchandise may be exported or entered into the Customs territory from a zone.

Zones are established under the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a-81u), and the general regulations and rules of procedure of the Foreign-Trade Zones Board (the Board), Department of Commerce (15 CFR Part 400). Part 146, Customs Regulations (19 CFR Part 146), governs the admission of merchandise into a zone; the manipulation, manufacture, or exhibition in a zone; the exportation of merchandise from a zone; and the transfer of merchandise from a zone into the Customs territory.

Articles taken into a zone from the Customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage are given "zone-restricted" status upon proper application. (Certain shipments of zone-restricted merchandise which have been placed in a zone to obtain the benefit of drawback or cancellation of a temporary importation bond are subject to footnote 3 of section 22.2, Customs Regulations (19 CFR 22.2) and T.D. 55819(11).)

Upon receiving zone-restricted status, merchandise is considered exported and may be returned to the Customs territory for domestic consumption only after the Board has determined that the transfer is in the public interest.

Because obtaining Board approval may be a time-consuming process and may result in lost sales to merchants who wish to transfer zone-restricted merchandise to a Customs bonded warehouse pending exportation, the question has arisen whether zone-restricted merchandise may be transferred to a Customs bonded warehouse pending exportation, without Board approval. While 19 U.S.C. 81c prohibits the return of merchandise to Customs territory from a zone for domestic consumption without Board approval, it does not prohibit the return of merchandise to Customs territory for warehousing prior to exportation. It is noted that section 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), provides, in part, that the total period of time that merchandise may remain in a bonded warehouse shall not exceed five years from the date of importation.

Customs published a notice in the Federal Register on August 27, 1982 (47 FR 37927), proposing to amend section 146.47, Customs Regulations (19 CFR 146.47), to permit the transfer of zone-restrict-

ed merchandise from a zone to a Customs bonded warehouse pending exportation, without obtaining approval of the Board.

DISCUSSION OF COMMENTS

Two of the three comments received in response to the notice support the change.

The third commenter opposes the change. He contends: (1) that there is no need to remove merchandise from a zone prior to actual exportation since an immediate export or a transportation and exportation movement can be arranged to take the merchandise directly from the zone to the exporting carrier without the involvement of the Board; (2) that the change creates a means of circumventing the prohibition against retail trade in a zone by allowing the merchandise to move from a zone to a warehouse, and eventually to a duty-free shop; and (3) that the change can only enhance the possibility that customs may lose complete control of zone-restricted merchandise, in view of an historic control problem with warehouse entries and immediate export and transportation for exportation bonded movements, and in view of the new warehouse procedures.

As the commenter notes, an immediate export or a transportation and exportation movement can be arranged without approval of the Board. However, commercial realities sometimes require the movement of zone-restricted merchandise to the port of exportation before there is a firm commitment with an exporting carrier. The amendment will simply permit such merchandise to be held in a bonded warehouse pending exportation. Approval of the Board will still be necessary where the goods are to be entered into the Customs territory for consumption or into a warehouse for any purpose other than exportation.

With respect to the commenter's second contention, Customs notes that there is no prohibition against retail trade in a Customs bonded warehouse operated as a duty-free shop. Merchandise sold from a duty-free shop is for export, and not for domestic consumption. Retail trade in a duty-free shop is not in derogation of the Foreign-Trade Zones Act of 1934 or the Customs Regulations.

Customs believes that the new warehouse audit/inspection approach provided for by T.D. 82-204 (see Federal Register of November 1, 1982 (47 FR 49355)), provides for adequate control over merchandise in warehouses, including zone-restricted merchandise transferred to warehouses. Pursuant to section 146.47(e)(4), Customs will maintain "paper control" over zone-restricted merchandise.

After analysis of the comments and further review of this matter, the proposal to amend section 146.47 is adopted. Language has been added to proposed section 146.47(e)(4) to provide that zone-restricted merchandise transferred from a zone to a Customs bonded warehouse may not be manipulated, except packing or un-

packing incidental to exportation. Further, pursuant to 19 U.S.C. 1557, the total period of time that merchandise may remain in a Customs bonded warehouse may not exceed five years from the date of importation.

LIST OF SUBJECTS IN 19 CFR PART 146

Customs duties and inspection, Exports, Imports, Foreign-trade zones.

AMENDMENTS TO THE REGULATIONS

Part 146, Customs Regulations (19 CFR Part 146), is amended as set forth below.

PART 146—FOREIGN-TRADE ZONES

1. Section 146.47(a) is revised to read as follows: § 146.47 Transfer of zone-restricted merchandise into Customs territory.

(a) *Types of entry.* If the return of zone-restricted merchandise to Customs territory for domestic consumption has been ruled by the Board to be in the public interest, it may be entered for consumption, for warehousing, or for immediate transportation without appraisement, unless the Board has specified which of these forms of entry shall be made. Otherwise, zone-restricted merchandise may be returned to Customs territory only for entry for exportation, for Customs bonded warehousing at the same or a different port prior to exportation, for entry for transportation and exportation, for destruction (except destruction of distilled spirits, wines, and fermented malt liquors), for transfer from one zone to another, or for delivery to a qualified vessel or aircraft or as ground equipment of a qualified aircraft under section 309 or 317 of the Tariff Act of 1930, as amended.

2. Section 146.47 is further amended by adding a new paragraph (e)(4) to read as follows:

(e) * * *

(4) Zone-restricted merchandise may be transferred from a foreign-trade zone to a Customs bonded warehouse for storage pending exportation. The warehouse entry, Customs Form 7502, shall be endorsed by the district director to show that the merchandise may not be withdrawn for consumption. In the case of zone-restricted merchandise transported in bond to another port for warehousing and exportation, Customs Form 7512 shall be endorsed by the district director to show that the merchandise is foreign-trade zone merchandise in zone-restricted status, which shall be entered for warehouse, with proper endorsement on Customs Form 7502, and which may not be withdrawn for consumption. Zone-restricted merchandise transferred from a foreign-trade zone to a Customs

bonded warehouse may not be manipulated, except packing or unpacking incidental to exportation. Pursuant to section 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), any merchandise placed in a Customs bonded warehouse may not remain in the warehouse after five years from the date of importation and no merchandise may be placed in a Customs bonded warehouse after five years from the date of importation.

(R.S. 251, as amended; section 1, 48 Stat. 998, *et seq.*, as amended; section 624, 46 Stat. 759 (19 U.S.C. 66, 81a-81u, 1624)).

REGULATORY FLEXIBILITY ACT

Pursuant to section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is certified that the regulations set forth in the document will not have a significant economic impact on a substantial number of small entities.

EXECUTIVE ORDER 12291

Because this document does not meet the criteria for a "major rule" as defined in section 1(b) of E.O. 12291, a regulatory impact analysis as prescribed by section 3 of the E.O. is not required.

DRAFTING INFORMATION

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: May 26, 1983.

JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, June 16, 1983 (48 FR 27536)]

U.S. Customs Service

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

The following are decisions made by the United States Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

JOHN P. SIMPSON,
Director,
Office of Regulations and Rulings.

(C.S.D. 83-21)

This decision holds that, pursuant to section 101.1(b), Customs Regulations, nonprivileged foreign merchandise transferred from a Foreign Trade Zone to a warehouse may remain in that warehouse for a period not to exceed five years from the date of importation.

Date: August 12, 1981
File: FOR-1-CO-R:CD:D
213254 WL

Issue: The following issue has been presented: Merchandise admitted into a foreign-trade zone (FTZ) in nonprivileged foreign status and subsequently transferred to a Customs bonded warehouse falls within the scope of the five year time limitation set out in section 144.5 of the Customs Regulations for merchandise in bonded warehouses. Does the five year limitation commence as of the date of constructive transfer of the merchandise from the U.S. FTZ to the Customs bonded warehouse or from the date of initial admission into the FTZ?

Facts: A substantial amount of foreign products have recently been admitted into an FTZ in nonprivileged foreign status. It is expected that this merchandise will remain in the FTZ for some years as it is a substantial quantity. All or portions of this merchandise will be transferred later to Customs bonded warehouses located in various parts of the United States for subsequent distribution. Since it is anticipated that the merchandise will be trans-

ferred to bonded warehouses in various Customs regions, a clear ruling on the issue is desired.

The inquirer suggests that the five year limit for merchandise transferred from an FTZ to a bonded warehouse should commence upon constructive transfer of the merchandise to the bonded warehouse, and notes the following passage from Headquarters letter FOR-1-R:CD:S, 208455, dated February 8, 1978 (L.D. 3215-01):

Section 146.48(c) permits the transfer of nonprivileged foreign merchandise from a zone to a Customs bonded warehouse. The merchandise is deemed to have been imported into the Customs territory at the time of its constructive transfer from the zone.

It is further suggested that since merchandise in an FTZ is not documented by the filing of a Customs Form (CF) 7502, Warehouse or Rewarehouse Entry, it would seem logical, for Customs documentation management purposes, that commencement of the five year warehouse period would occur at the time merchandise is constructively transferred from the FTZ and enters a bonded warehouse as documented on CF 7502.

Law and analysis: Section 557(a), Tariff Act of 1930, as amended (19 U.S.C. 1557(a)), relating to entry for warehouse, provides in part that "the total period of time for which such merchandise may remain in bonded warehouse *shall not exceed five years from the date of importation*". (Italic added.) See also section 144.5(a), Customs Regulations (19 CFR 144.5(a)).

An essential determination, then, is what constitutes an importation. The common dictionary definition of the word "import" is "to bring merchandise from a foreign country or state into one's own country or state; opposed to export". However, for Custom's purposes, an importation into the United States means not merely a bringing of goods within our jurisdiction limits but also a bringing of them into some port, harbor, or haven with an intent to land them there. *The Mary*, 16 Fed. Cases 932, 933. For our purposes then, an importation is complete when goods are brought within the limits of a port of entry with the intention of unloading them there. *Kidd v. Flagler*, 55 Fed. 367, 369, citing *United States v. Vowell*, 5 Cranch 368; *Kohne v. Ins. Co.*, 1 Wash. 138, 165; *United States v. Ten Thousand Cigars*, 2 Curt. 436, 437.

With respect to the intent of Congress when it enacted the Foreign Trade Zone Act, the Senate report on the Foreign-Trade Zones Act, dated April 26, 1934, made reference to the 1918 Tariff Commission report which stated that the purpose of an FTZ is:

To encourage and expedite that part of a nation's foreign trade which its government wishes to free from the restrictions necessitated by Customs duties. In other words, it aims to foster the dealing in foreign goods that are imported, not for domestic consumption, but for reexport to foreign markets and

for conditioning, or for combining with domestic products previous to export.

The 1918 report also described an FTZ in these terms:

It is subject equally with adjacent regions to all the laws relating to public health vessel inspection, postal service, labor conditions, immigration, and indeed everything except the Customs.

Accordingly, merchandise brought into an FTZ from another country has been imported into the United States regardless of the fact that it may not be considered as being within the Customs territory. See also ORR Ruling 760067, December 22, 1975, copy attached.

While it appears that the Customs Service has not specifically ruled previously on when the warehouse period commences on non-privileged foreign merchandise transferred from an FTZ to a bonded warehouse, it has ruled that where merchandise is removed from an FTZ under a temporary admission under bond entry, the date of importation is the date defined by section 101.1(h), Customs Regulations (19 CFR 101.1(h)). See Legal Determination (L.D.) 79-0279, clarified by L.D. 81-0028.

In this connection, Headnote 1(a) to Schedule 8, Part 5C, Tariff Schedules of the United States, provides in part that certain articles may be admitted into the United States without payment of duty, under bond for their exportation within one year *from the date of importation*. (Emphasis added.) Section 101.1(h), Customs Regulations, defines "date of importation" as, in the case of merchandise imported otherwise than by vessel, the date on which the merchandise arrives within the Customs territory of the United States. In the case of merchandise imported by vessel, it means the date on which the vessel arrives within the limits of a port in the United States with intent then and there to unlade such merchandise.

In view of the express provision in section 557(a) Tariff Act of 1930, as amended, that merchandise may not remain in a bonded warehouse for more than five years from the date of importation, and the fact that merchandise in an FTZ is imported for Customs purposes, we conclude that, with respect to nonprivileged foreign merchandise in an FTZ that is subsequently transferred from the FTZ and entered for warehouse, the five year limitation for storage in the warehouse commences upon importation of the merchandise into the United States as defined in section 101.1(h), Customs Regulations.

Holding: When merchandise with nonprivileged foreign status is transferred from an FTZ and entered for warehouse in a Customs bonded warehouse, the five year period that the merchandise may remain in the warehouse commences as of the date of importation, as that date is defined in section 101.1(h), Customs Regulations. It

does not commence as of the date of constructive transfer of the merchandise from the FTZ to the bonded warehouse or from the date of admission of the merchandise into the zone.

That portion of L.D. 3215-01 indicating that merchandise is deemed to have been imported into the Customs territory at the time of its constructive transfer from the zone is revoked.

(C.S.D. 83-22)

This decision (telex) holds that property belonging to the United States Government and military personnel engaged in official business and transported between points in the United States in a foreign-built, U.S.-flag vessel, are not merchandise or passengers for purposes of the coastwise laws (46 U.S.C. 883).

Date: October 14, 1981
File: VES-2/VES-3-08-CO:R:CD:C
105371 PH

Reurtelex October 14, 1981 (our ref 105371), quoting COMSC message 092346Z Oct 81 concerning cabotage waiver for foreign-built, U.S.-flag vessel (name). Vessel is under long-term time charter to military sealift command. Vessel is to be used in military exercise involving transportation of Government owned military vehicles from Savannah, Georgia, to Pensacola, Florida, commencing October 15, 1981. Cargo is stated to require attendance of approximately eight active duty military personnel as "super-cargo".

Coastwise laws, in part, prohibit transportation of merchandise or passengers between points in U.S. in foreign-built vessel, with certain exceptions not here relevant (see 46 U.S.C. 11, 289, 883). Thus, (name) may not transport merchandise or passengers in coastwise trade. However, per ruling letters VES-2-R:CD:C 103723 CH, January 3 and 10, 1979, property

(Page Two of Telex)

Belonging U.S. Government is not "merchandise" within meaning of 46 U.S.C. 883 (see also 26 O.A.G. 415, 425). "Passengers", for purposes of coastwise laws, include "any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business" (see 19 CFR 4.50(B)). Eight active duty military personnel are connected with business of vessel, assuming they are to guard or supervise transportation of government owned military vehicles.

Accordingly, proposed transportation will not violate coastwise laws and no waiver is necessary.

(C.S.D. 83-23)

This decision holds that, pursuant to 19 U.S.C. 1313(j), accidental destruction or damage to merchandise after importation renders

the damaged or destroyed merchandise ineligible for same condition drawback.

Date: July 15, 1982

File: DRA-1-09:CO:R:CD:D

214672 B

Re: Your letter of July 8, 1982—Same Condition Drawback—
Accidental Destruction or Damage after Importation
Dear (name)

In your letter you refer to our September 23, 1981, letter to the National Committee on International Trade Documentation wherein we stated that accidental destruction or damage after importation made the article or merchandise damaged or destroyed ineligible for same condition drawback.

You have a client who imported a machine which was damaged in a trailer-truck accident after entry and release by Customs. You feel that your client should not be denied the opportunity to claim and collect a same condition drawback refund.

The law as written and the intent of the Congress in passing the law are very clear. Something that is damaged after importation cannot be said to be in the same condition as when imported. As for complete destruction, if the happenstance occurs without Customs supervision, same condition drawback may not be had because the law specifically requires that to obtain a refund the article or merchandise must be destroyed under Customs supervision while in the same condition as when imported.

Accidental destruction and accidental damage must be treated in the same manner as accidental use of an imported article for its intended purpose, which also negates the benefits of the law. Should a coat salesman accidentally wear one of his samples to a social outing the coat has nevertheless been used for its intended purpose. Likewise, should another sample be damaged during cleaning, the coat is no less damaged and not in the same condition as imported.

Any loss of a same condition drawback refund due to damage after importation in situations outlined by you is a civil matter between the involved parties.

We trust the foregoing clarifies our position.

(C.S.D. 83-24)

This decision holds that, under section 402(b), Tariff Act of 1930, as amended by the Trade Agreements Act of 1979, transaction value may not be derived from the original contract price for imported goods once the purported buyer has renounced the contract.

Date: August 27, 1982

File: CLA-2 CO:R:CV:V

542895 CW

TAA #51

To: Area Director of Customs, New York Seaport 10048.

From: Director, Classification and Value Division, Headquarters.

Subject: Internal Advice Request No. 134/82: Effect on Appraisal of Refusal of Original Buyer to Pay for Imported Merchandise.

This is in reference to your memorandum of July 27, 1982, received in this office on August 5, 1982, which forwarded the subject request filed by (NAME AND OWNER OF COMPANY) the foreign producer of the merchandise in question (boy's jeans). The issue presented for consideration concerns whether transaction value under section 402(b), Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), may properly be derived from the original contract price for the imported merchandise, even though subsequent to importation of the goods the supposed purchaser refused to accept or pay for the merchandise.

(Name) (hereinafter referred to as "owner") states in a letter, dated June 28, 1982 that the original customer agreed to pay his company \$32.00 per dozen pairs of boys' jeans. However, once the shipment arrived in the United States, the customer, for various reasons, refused to accept and pay for the merchandise. The owner advises that he has located a new buyer for the merchandise who has agreed to pay \$16.00 per dozen, plus the Customs duties based on that purchase price. According to the owner, if Customs ultimately decides that \$32.00 per dozen is the appraised value of the jeans, the new buyer would refuse to pay duties based on that amount and, therefore, there would be no sale. For this reason, the owner requests that Customs determine that the appraised value of the merchandise is \$16.00 per dozen.

In the opinion of your office, transaction value is represented by the original contract price of \$32.00 per dozen since that amount was "the total payment to be made by the buyer to the seller when the merchandise was contracted for sale for exportation to the United States."

As you know, transaction value is defined in section 402(b) as "the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts . . ." for certain items not already included in that price (emphasis added). Thus, the "price actually paid or payable" must be derived from an actual sale. The word "sale" generally is defined by the courts as a transfer of ownership in property from one party to another for a price or other consideration. See *J. L. Wood v. United States*, 62 CCPA 25, C.A.D. 1139 (1974), and *J. H. Cottman & Co. v. United States*, 20 CCPA 344, T.D. 46114 (1932).

In the factual situation under consideration, it is clear that the original customer and the foreign producer entered into an agreement to purchase a quantity of boys' jeans for \$32.00 per dozen. However, it is also clear from this customer's subsequent refusal to pay the agreed upon price that there was never a transfer of ownership in the merchandise to that cus-

tomer. Consequently, no sale was consummated between the parties at the \$32.00 per dozen price. Moreover, as there was no other price at which the merchandise was "sold for exportation to the United States," transaction value is eliminated as the basis of appraisement for the imported jeans.

The next in order of precedence of the bases of valuation under the TAA is the previously-accepted transaction value of identical merchandise exported to the United States at or about the same time as the instant merchandise. If identical merchandise cannot be found or an acceptable transaction value for such merchandise does not exist, then the applicable Customs value is the previously-accepted transaction value of similar merchandise exported to the United States at or about the same time as the goods being valued. We are unable to ascertain from the information provided to us whether the transaction value of identical or similar merchandise under section 402(c) can be satisfactorily determined in this case.

If your office determines that the imported merchandise cannot be appraised on the basis of transaction value of identical or similar merchandise, and if the shipment is sold in the United States to the second customer at \$16.00 per dozen, we believe that this price can serve as the basis from which to determine the third alternative basis of appraisement, deductive value under section 402(d). This, of course, assumes that the importer does not elect to have the computed value method of appraisement applied before the deductive value method.

(C.S.D. 83-25)

This decision addresses the dutiable status, under item 696.10, Tariff Schedules of the United States, of a yacht imported into the United States to be sold and refundable duty under 19 U.S.C. 1313(j) if exported unsold.

Date: September 16, 1982
File: VES-12-02-CO-R:CD:C
105792 JL

Dear (Name)

This is in reference to your letter of August 18, 1982, in which you ask certain questions concerning a 32 foot yacht you intend to sail to the United States and sell, specifically in either Hawaii or California.

Customs duties on a yacht brought into the United States for sale to a U.S. resident are computed at 4.6% of its value if it is valued over \$15,000, as you indicate yours is. When a yacht is brought into the U.S. it is subject to entry and payment of duty immediately upon being offered for sale. If offered for sale prior to being brought in, entry and payment of duty is required upon its arrival. The fact that the yacht is not subsequently sold would not affect its dutiability. The tariff number that the yacht would be entered under is item 696.10, TSUS (Tariff Schedules of the United States).

Notwithstanding the above, if your yacht is brought into the U.S. but offered for sale only to non-residents (under a restricted listing), then no duty liability will accrue. You should also be aware that a yacht brought into this country for sale (or charter) generally, and subsequently sold to a non-resident would nevertheless be dutiable by virtue of its having been so offered.

If duty is paid and the yacht is not sold, you may be able to recover 99% of the amount paid *provided* the yacht is exported within 3 years of its importation, is exported in the same condition as when imported, and is not used in this country before its exportation. Destruction of the yacht (under U.S. Customs supervision) will satisfy the exportation requirement. This is accomplished under the "same condition drawback law" (19 U.S.C. 1313(j)).

The above addresses the Customs duties that would be applicable to your yacht if brought in for sale. What sales taxes, if any, that would be payable would be levied by the individual states and you should write directly to the sales tax offices in Hawaii and California for that information.

We are enclosing for your information a copy of a pamphlet entitled "Pleasure Boats," which should be of some aid to you.

(C.S.D. 83-26)

This document provides that if deterioration occurs which significantly changes the condition of importer merchandise after importation, same condition drawback law would be rendered inapplicable.

Date: September 23, 1981
File: DRA-1-09-CO.R:CD:D
213093 B

This is in reply to your letter of May 27, 1981, concerning the same condition drawback law, 19 U.S.C. 1313(j), setting forth issues which you feel should be resolved relative to the operation of that statute.

We are replying in order to the issues you raised:

Application Prior to Export

In a ruling (file 212709) dated March 26, 1981, published as Legal Determination 81-0126, we held that the exporters' summary procedure, currently covered by section 22.7(d) of the regulations, could be used by claimants under same condition drawback upon approval by the Regional Commissioner. Use of this procedure obviates the necessities of presentation for examination and exportation under Customs supervision. There is no legal impediment to its use in same condition drawback claims.

Documentation

We agree that the requirements of inclusion of the import entry in the same condition drawback "package" may be bur-

densome when the claimant is not the importer of record. Same condition drawback claimants in many cases will not be the importer of record, and since these claimants are not entitled to access to the consumption entry, we have informed other inquirers that for identification purposes, use of a Certificate of Delivery, CF 7543, provided by the importer, would be proper. The CF 7543 will identify the consumption entry. We do not believe it would be proper to allow "other documentation" to establish identification because the CF 7543 is required for manufacturing drawback to trace and identify the imported merchandise. As for documentation to prove entry and payment of duty, the best evidence is the entry itself.

Accelerated Payment

We have notified the Regional Commissioners that same condition drawback claimants should be allowed to participate in the accelerated payment program. Please see the enclosed copy of T.D. 81-242 to this effect.

Identity of Merchandise

We have given recognition to identification of imported fungible merchandise by the FIFO accounting method. Note from the enclosed ruling of September 2, 1981 (file 213253) the low-to-high method heretofore required by section 22.4(f) of the regulations in direct identification manufacturing drawback claims has been waived. Because 22.4(f) also applies to same condition drawback merchandise, that waiver and allowance of use of the FIFO principle also applies to same condition drawback merchandise. The proposed drawback regulations, 19 CFR Part 191, reflect the new position.

Deterioration and Damage

It is evident from the wording of the same condition drawback statute and its legislative history that in order for merchandise to be subject to same condition drawback, the merchandise must be destroyed *under Customs supervision* or exported in the same condition as imported, with the exception of some change due to allowable incidental operations.

If deterioration occurs to the extent the condition of the imported goods is significantly changed, it cannot be said these goods are in the same condition as imported. Likewise, if merchandise is destroyed accidentally or otherwise without supervision of Customs, allowance of drawback would contravene the express language of the statute.

Accidental destruction of imported merchandise should and would be treated no differently than the accidental subsection of the merchandise to a use proscribed by the statute.

We trust the foregoing information suffices to present our position on the subjects you raised.

(C.S.D. 83-27)

This letter states that tolbutamide should be classified under item 412.68, TSUS.

Date: September 30, 1982

File: CLA-2 CO:R:CV:G

070554 JH

In your letter of September 13, 1982, you note that tolbutamide may be added to list of articles eligible for duty-free treatment under the Generalized System of Preferences, and state that there is a question concerning its correct tariff classification.

In this regard, you submitted a letter from the International Trade Commission (ITC) in which the opinion is expressed that tolbutamide is neither an anti-infective sulfonamide classifiable in item 411.84, TSUS, as claimed by the petitioner government, Romania, nor classified in item 412.68, TSUS, the basket category for other products suitable for medicinal use and drugs, as contended by the Customs Service.

The ITC states that tolbutamide is a synthetic hypoglycemic agent used in the treatment of certain cases of diabetes. They therefore feel that it is a substitute for the hormone insulin and is classifiable within the group of drugs covered by the superior heading "Hormones, synthetic substitutes, and antagonists": specifically item 412.48, TSUS, the CAS basket provision. They base this decision on Headnote 11, Part 1(C), Schedule 4, which states that any product described in two or more items under item 411.30 to 412.70, inclusive, is to be classified in the first applicable item. It is their opinion that item 412.48 is that first applicable item, as tolbutamide is a synthetic substitute for insulin.

We disagree. Information furnished by our Technical Services Division is that tolbutamide is an orally effective hypoglycemic agent useful in the management of selective cases of *diabetes mellitus*. It is related chemically to the antibacterial sulfonamides but possesses no antibacterial activity itself. The primary mechanism by which tolbutamide lowers blood sugar levels appears to be by stimulating the secretion of insulin (a hormone) from the beta cells of the pancreatic islets of Langerhans. It is ineffective in the absence of functioning beta cells.

Since the drug possesses no antiinfective properties, classification under item 411.84 is not appropriate. It is also apparent from its mode of action that tolbutamide is not itself a hormone, nor can it be substituted for a hormone as a "synthetic substitute". It has an effect on certain cells of the pancreas where it induces the release of the hormone insulin. Thus, it functions as a releasing agent. Moreover, tolbutamide is not an antagonist to insulin activity or of any other known hormonal action. Accordingly, it would not be classified in item 412.48, TSUS.

Therefore, since it is not more specifically described in any other provision of the tariff, tolbutamide would be classifiable under the provision for other drugs or products suitable for medicinal use in item 412.68, TSUS, a product provided for in the CAS appendix to the tariff schedules.

(C.S.D. 83-28)

This decision holds that, pursuant to section 22.20(a), Customs Regulations, accelerated drawback claimants, after having established a drawback value for certain articles, may use that value for future claims for the same articles.

Date: October 1, 1982

File: DRA-1-09-CO-R:CD:D

214499 B

Issue: When the drawback payable on an article has been established by a prior drawback claim, may claimant compute future claims for accelerated payment on that article by providing the quantity of the article exported, the drawback payable per unit of the article as shown by the prior claim, the total amount of drawback payable, and the import entry number for the designated merchandise?

Facts: A claimant under accelerated payment computes drawback due by determining the amount of drawback per unit, multiplying that amount by the number of units exported, and then claiming 90 percent of that estimated amount. The region asks if this method meets the standard of the "computation of the amount due" as required by section 22.20a of the regulations.

Law and analysis: Section 22.20a, Customs Regulations, provides in pertinent part:

* * * A claimant, requesting accelerated payment of a claim, shall submit with the claim *a computation of the amount due thereon* * * *.

The question is what is intended by the word *computation*. Because a bond is required to operate under the accelerated program, there is no threat to the revenue should the figures submitted to a region be incorrect. Also a claimant who repeatedly overcomputes his drawback must, in accordance with the regulations, be removed from the accelerated payment program.

The alternative to using the method favored by claimant would be to supply the import entry number for the designated merchandise, the entered value, the rate of duty, and the duty paid. Claimant objects to this alternative because, when it applies for accelerated payment, it usually does not have this information and, not being the importer, is not entitled to it. When claimant has the import entries it generally does not consider that accelerated payment is worth the extra expense of obtaining surety on a bond.

The computation provided by a claimant under accelerated payment is not meant to be a final liquidation of the claim. To require a computation that would be as precise as the final liquidation of the drawback claim would defeat the purpose of the accelerated payment program, which was instituted because Customs could not always liquidate claims expeditiously. In addition since the entered value is not always the final liquidated value, the alternative method is not necessarily more precise than claimant's method.

Holding: When the drawback payable on an article has been established by a prior drawback claim, claimant may compute future claims for accelerated payment on that article by providing the quantity of the article exported, the drawback payable per unit of the article as shown by the prior claim, the total amount of drawback payable, and the import entry number for the designated merchandise.

U.S. Customs Service

Proposed Rulemaking

19 CFR Parts 10, 147

Proposed Customs Regulations Amendments Relating to Drawback of Internal Revenue Tax and Transfer of Merchandise Entered for a Trade Fair From a Foreign-Trade Zone

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes amendments to the Customs Regulations relating to drawback of internal revenue tax and transfer of merchandise entered for a trade fair from a foreign-trade zone, to substitute current references to Tariff Schedules of the United States item numbers. The foregoing changes are necessary to conform the regulations to statutory provisions. The document also proposes a regulation amendment to clarify that the transfer of articles entered for a trade fair from a foreign-trade zone status of "zone restricted", and afterwards entered for consumption from a trade fair, can only be accomplished after the Foreign-Trade Zones Board has approved such a transfer as being in the public interest. This nonsubstantive change is necessary to avoid possible misinterpretation of the regulations and clearly state statutory requirements.

DATES: Comments must be received on or before August 16, 1983.

ADDRESS: Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Legal aspects of Part 147, Customs Regulations: Donald Beach, Carriers, Drawback and Bonds Division, (202-566-5865). Legal aspects of Part 10, Customs Regulations: Russell X. Arnold, Classification and Value Division (202-566-5727). Operational aspects: Herbert Geller, Duty Assessment Division (202-566-5307). U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document proposes to implement Pub. L. 91-692 by amending the following two sections of the Customs Regulations: Section 10.3, Customs Regulations (19 CFR 10.3), and footnote 2 to that section relating to drawback of international revenue taxes; and section 147.45, Customs Regulations (19 CFR 147.45), relating to the transfer of merchandise entered for a trade fair from a foreign-trade zone, to delete the reference to item 804.00, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), and substitute TSUS items 804.10 and/or 804.20, as appropriate.

Prior to Pub. L. 91-692, articles produced in the United States with the use of foreign articles imported under bond were excluded from entry under the provisions of TSUS item 804.00 as "American goods returned." Such articles would have to be entered and duty paid under another applicable provision of the TSUS. However, articles produced in the United States with the use of foreign articles and exported with the benefit of drawback (the refund of a duty or tax lawfully collected because of a particular use of the merchandise on which the duty or tax was collected (section 313(a) Tariff Act of 1930, as amended (19 U.S.C. 1313(a))) could be imported under TSUS item 804.00 as "American goods returned" upon repayment of the drawback.

In the manufacture of aircraft in the United States, it is fairly common practice to use some foreign articles or materials. Export sales of aircraft produced in the United States are significant, and normally, the duty paid on the foreign articles used in the manufacture of such aircraft is subject to the drawback procedure set forth in Part 22, Customs Regulations (19 CFR Part 22), under which 99 percent of the duty paid on the foreign articles or materials is refunded upon exportation of the completed aircraft. In some instances, foreign articles for use in aircraft are temporarily entered to be repaired or altered under TSUS item 864.05, free of duty under bond (see sections 10.38 and 10.39, Customs Regulations (19 CFR 10.38, 10.39)). Such temporary duty-free entry arrangement is preferred by some manufacturers since no large amount of capital is committed to duty payment for the period between the original entry of the foreign component and the drawback of the duty upon exportation of the aircraft.

Over the years both provisions, i.e., drawback and temporary importation under bond, have been used with respect to eliminating the cost of U.S. duty on foreign articles used in the domestic manufacture of aircraft which are subsequently sold abroad. Competition in the sales of new aircraft in world markets is rising. Very often the "trade in" allowance for old aircraft is an important factor in obtaining contracts for sales of new aircraft abroad. Under these circumstances, the dutiable status of the old aircraft being "traded in" and returned to the United States becomes important.

In view of the importance of the "trade in" of old aircraft to sales of new aircraft abroad, Congress believed it important to provide similar Customs treatment to aircraft produced in the United States which are sold abroad and returned, whether the drawback or temporary importation bond procedure was used with respect to foreign components. Pub. L. 91-692 provided such Customs treatment for aircraft by amending the TSUS to delete item 804.00, which provided for articles previously exported from the United States which are excepted from free entry under any of several other provisions of Schedule 8, Part 1, TSUS, and are not otherwise free of duty, and inserting in its place (a) TSUS item 804.10, relating to aircraft exported from the United States with benefit of drawback or TSUS item 864.05, and (b) TSUS item 804.20, relating to other articles. In light of the foregoing, it is necessary to amend section 10.3 and footnote 2 to that section and section 147.45 to delete the reference to TSUS item 804.00 and substitute a reference to TSUS items 804.10 and/or 804.20, as appropriate.

In addition to the above proposed amendment, Customs proposes to amend section 147.45 to clarify that the transfer of articles entered for a trade fair from a foreign-trade zone status of "zone restricted" and afterwards entered for consumption from a trade fair can only be accomplished after the Foreign-Trade Zones Board ("Board") has approved such a transfer as being in the public interest.

Customs has determined that section 147.45 does not, in its present form, make it clear that the transfer of articles entered for a trade fair from a foreign-trade zone status of "zone restricted" and afterwards entered for consumption from a trade fair can only be accomplished after the Board has approved such a transfer as being in the public interest.

Foreign or "free" trade zones are secured areas legally outside a nation's customs territory. Their purpose is to attract and promote international trade. Zones are operated as public utilities by states, their political subdivisions, or corporations chartered for that purpose. Foreign-trade zones usually are located in or near customs ports of entry at industrial parks or terminal warehouse facilities.

The Foreign Trade Zones Act of 1934 (19 U.S.C. 81a *et seq.*) created the Board to review and approve applications to establish, operate, and maintain foreign-trade zones (see 15 CFR Part 400). The Board may approve any zone or subzone which it deems necessary to serve adequately "the convenience of commerce." The Board also regulates the administration of foreign-trade zones and the rates charged by zone operators, known as "grantees."

As provided in Part 146, Customs Regulations (19 CFR Part 146), Customs is responsible for the transfer of merchandise into and out of a zone and for matters involving the collection of revenue. The Customs Office of Regulations and Rulings, at Customs Headquar-

ters, provides legal interpretations of the applicable statute, Customs Regulations, or procedure.

The district director of Customs in whose district a zone is located is in charge of the zone as the local representative of the Board. He controls the admission of merchandise into the zone, the handling and disposition of merchandise in the zone, and the removal of merchandise from the zone.

The exportation, entry, classification, and appraisement of merchandise transferred from a foreign-trade zone is affected by the "status" of the merchandise in the zone. Merchandise may have a (1) privileged foreign status, (2) privileged domestic status, (3) zone restricted status, (4) nonprivileged status, foreign and domestic, or (5) mixed status. Each status, which is provided for in sections 146.21 through 146.25, Customs Regulations (19 CFR 146.21-146.25), is discussed below.

Privileged foreign status. Prior to any manipulation or manufacture which would change its tariff classification, an importer may apply to the district director to have imported merchandise in the zone given privileged foreign status. The merchandise is classified and appraised and duties and taxes are determined as of the date the application is filed. Taxes and duties are payable, however, only when such merchandise or articles manipulated, manufactured, or produced from such merchandise, are transferred from the zone to the customs territory of the United States.

Privileged domestic status. Privileged domestic status, which may be approved upon application to the district director, is available for merchandise which is (a) the growth, product, or manufacture of the United States on which all internal revenue taxes, if applicable, have been paid; (b) previously imported merchandise on which duty and/or tax have been paid; or (c) merchandise previously admitted free of duty and tax. Privileged domestic merchandise may be returned to the customs territory free of duty and tax.

Zone restricted status. Merchandise transferred to a zone from the customs territory for storage or for the purpose of satisfying a legal requirement for exportation or destruction is considered exported and cannot be returned to the customs territory for consumption unless the Board rules specifically that its return is in the public interest. The status of merchandise transferred to a zone under these circumstances is "zone restricted." Zone restricted merchandise may not be manipulated, except to destroy it, or manufactured in a zone. As in the case of privileged status, the zone user must apply for zone restricted status on the appropriate foreign-trade zones form.

Nonprivileged status. Nonprivileged status is a residual category for merchandise which does not have privileged or zone restricted status. Articles composed entirely of or derived entirely from nonprivileged merchandise are classified and appraised in their condi-

tion at the time of legal transfer to the customs territory for consumption or for customs bonded warehousing.

Mixed status. Since manipulation and manufacture are permitted in a zone, articles transferred to the customs territory may be composed in part of, or derived in part from, merchandise that is privileged and nonprivileged, whether foreign and/or domestic. The articles are appraised according to the status of the merchandise of which they are composed or from which derived, as explained above.

Section 146.25, Customs Regulations, states that zone restricted merchandise, other than as set forth in section 146.47, Customs Regulations, may not be returned to the customs territory for domestic consumption except where the Board deems such return to be in the public interest.

Section 146.47 states that zone restricted merchandise may be returned to the customs territory only for entry for exportation, for entry for transportation and exportation, for destruction (except destruction of distilled spirits, wines, and fermented malt liquors), for transfer from one zone to another, or for delivery to a qualified vessel or aircraft or as ground equipment of a qualified aircraft under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317). Any other transfer requires the Board to rule that the return of the merchandise to the customs territory for domestic consumption is in the public interest.

Accordingly, to avoid any misunderstanding, Customs is of the opinion that section 147.45 should be amended to clarify that the transfer of articles entered for a trade fair from a foreign trade zone status of "zone restricted" and afterwards entered for consumption, can only be accomplished after the Board has approved such a transfer as being in the public interest.

EXECUTIVE ORDER 12291

This document will not result in a regulation which is a "major rule" as defined by section 1(b) of Executive Order 12291.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to these amendments because the rule will not have a significant economic impact on a substantial number of small entities. The proposed amendments are technical conforming amendments which clarify existing regulatory requirements without making any substantive change.

Accordingly, it is certified under the provisions of section 3, Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

AUTHORITY

This document is issued under the authority of R.S. 251, as amended, sections 1-21, 48 Stat. 998, 999, as amended, 1000, 1002, as amended 1003, 77A Stat. 14, section 624, 46 Stat. 759 (19 U.S.C. 66, 81a-81u, 1202 (General Headnote 11), 1624).

DRAFTING INFORMATION

The principal author of this document was John E. Elkins, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS

19 CFR Part 10

Customs duties and inspection, imports.

19 CFR Part 147

Customs duties and inspection, fairs and expositions, imports.

PROPOSED AMENDMENTS TO THE REGULATIONS

It is proposed to amend Parts 10, and 147, Customs Regulations (19 CFR Parts 10, 147), as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

It is proposed to amend section 10.3(a) by removing (a) the reference to footnote 2 and footnote 2, (b) the words "item 804.00" wherever they appear in paragraph (c)(3) and inserting in their place the words "items 804.10 or 804.20" and (c) the words "item 804.00" in paragraph (f) and inserting in their place the words "item 804.20."

PART 147—TRADE FAIRS

It is proposed to amend section 147.45 by revising it to read as follows:

§ 147.45 Merchandise from a foreign-trade zone.

Articles entered for a trade fair from a foreign-trade zone in the status of "zone-restricted merchandise" can afterwards be entered for consumption from a fair if the Foreign-Trade Zones Board has approved the entry for consumption as being in the public interest. Articles entered in the above manner are subject to the provisions of item 804.10, if aircraft, or item 804.20, if not aircraft, unless excluded by headnote 1(c), Subpart A, Part 1, Schedule 8, Tariff Schedules of the United States.

ALFRED R. DEANGELUS,
Acting Commissioner of Customs.

Approved: May 26, 1983.

JOHN M. WALKER, JR.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, June 17, 1983 (48 FR 27776)]

19 CFR Part 152**Proposed Customs Regulations Amendment Relating to Valuation
of Imported Merchandise**

Agency: U.S. Customs Service, Department of the Treasury.

Action: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to exclude from the transaction value of imported merchandise all documented foreign inland freight costs which occur subsequent to the placing of that merchandise on the exporting carrier.

The proposed amendment is necessary to equalize adjustments made in the price actually paid or payable for merchandise imported from contiguous and non-contiguous countries.

DATES: Comments must be received on or before August 16, 1983.

ADDRESS: Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Thomas L. Lobred, Value Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-2938).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Public Law 96-39, the Trade Agreements Act of 1979, incorporated into U.S. law the trade agreements negotiated by the United States in the Tokyo Round of Multilateral Trade Negotiations. Title II of the Trade Agreements Act of 1979, "Customs Valuation," implemented the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the "Valuation Agreement"). Title II made significant changes in the laws administered by Customs relating to the valuation of imported merchandise by amending section 402, Tariff Act of 1930, as amended (the "Act") (19 U.S.C. 1401a). The Customs Regulations issued to administer the new statutory valuation scheme are contained in Subpart E, Part 152, sections 152.100-152.108 (19 CFR 152.100-152.108).

Present section 402 of the Act provides for five bases for determining value presented in order of precedence of application. The first and primary basis of value is transaction value. Only if transaction value cannot be determined, or cannot be used, may another basis of value be used. The transaction value of imported merchandise, essentially, is the "price actually paid or payable" for the merchandise when sold for exportation to the United States. The term "price actually paid or payable" is defined in the Act as the total payment (whether direct or indirect, and *exclusive of* any costs, charges, or expenses incurred for transportation, insurance, and related services *incident to the international shipment of the merchandise* from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller (section 402(b)(4)(A)) (*italic supplied*). It is clear, then, that any costs for insurance, freight, *etc.*, involved in the international movement of merchandise are to be excluded from the dutiable value of imported merchandise appraised using the transaction value basis. However, in many cases, another significant cost to an importer is the expense related to foreign inland freight charges, especially where the seller quotes prices on a c.i.f. (delivered) method. (Note: Costs incurred in the transportation of imported merchandise in the U.S., if identified separately, also are excluded from the transaction value.)

Current Customs policy in regard to foreign inland freight, stated in section 152.103(a)(5), is to include that cost in the transaction value if it is indeed reflected in the price actually paid or payable to the seller, *e.g.*, in a c.i.f. price quotation. On the other hand, if the price actually paid or payable to the seller does not include the cost of foreign inland freight, *e.g.*, in an ex-factory price quotation, that cost will not be added to the price if paid to a freight forwarder unrelated to the seller.

The policy described above has led in practice to an anomalous situation in regard to the adjustment made in the price actually paid or payable for international transportation of merchandise im-

ported into the United States from contiguous and non-contiguous countries. Appraisalment of merchandise imported from non-contiguous countries has resulted in obvious adjustments for international transportation and related expenses, whereas merchandise imported from contiguous countries receives little or no adjustment for international transportation costs, although an international movement occurs. Furthermore, under section 152.103(a)(5), no adjustment for foreign inland freight may be made when, as often is the case, the merchandise is purchased from the foreign seller on a c.i.f. basis. The effect is to increase the cost to the U.S. consumer of merchandise imported from contiguous countries, and weaken the competitiveness of that merchandise *vis-a-vis* merchandise imported from non-contiguous countries. Such a result also derogates from the uniform application of the Customs system of valuation of imported merchandise derived from the Valuation Agreement and U.S. law.

After consideration of the problem, Customs believes that the definition of "the price actually paid or payable" excluding costs incident to the international shipment of merchandise from transaction value, supports an interpretation to exclude as well all documented foreign inland freight costs which occur subsequent to the placing of the imported merchandise on the exporting carrier. To illustrate, under the proposal if merchandise is purchased by a U.S. buyer at Chicago, Illinois, from a Canadian seller at Edmonton, Alberta, on a c.i.f. basis, the cost of rail transportation through Canada to the U.S. border would be construed as international, not foreign inland, freight and excluded from transaction value if the railway car loaded in Edmonton is deemed to be the exporting carrier. At present, the cost of that railway transportation, if paid to the seller, would be included in the price actually paid or payable for the imported merchandise and dutiable as such.

Accordingly, to ensure like treatment of all imported merchandise regardless of the mode of transportation used, Customs proposes to amend the regulations to exclude from the dutiable value of that merchandise as "international freight," certain costs paid to a seller in a contiguous country that are now dutiable as foreign inland freight.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

AUTHORITY

This amendment is proposed under the authority of R.S. 251, as amended, section 624, 46 Stat. 759, section 201, 93 Stat. 194 (19 U.S.C. 66, 1401a, 1624).

EXECUTIVE ORDER 12291

Because this document will not result in a regulation which will be a "major rule" as defined in section 1(b) of E.O. 12291, a regulatory impact analysis as prescribed by section 3 of the E.O. is not required.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities or to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

DRAFTING INFORMATION

The principal author of this document was Todd J. Schneider, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 152

Customs inspection and duties, imports, valuation.

PROPOSED REGULATIONS AMENDMENT

It is proposed to amend Part 152, Customs Regulations (19 CFR Part 152), in the following manner:

PART 152—CLASSIFICATION AND APPRAISEMENT OF
MERCHANDISE

It is proposed to revise section 152.103(a)(5) to read as follows:
Section 152.103 Transaction value.

(a) *Price actually paid or payable—*

* * * * *

(5) *Foreign inland freight.* If the price actually paid or payable by the buyer to the seller for the imported merchandise does not include a foreign inland freight charge (an ex-factory price), the foreign inland freight charge will not be added to the price if paid to a unrelated seller. In those situations where the price actually paid or payable for imported merchandise included a charge for foreign inland freight, that charge will be part of the transaction value to the extent it is included in that price. However, all documented foreign inland freight costs which occur subsequent to the placing of the imported merchandise on the exporting carrier are deemed to be incident to the international shipment of that merchandise within the meaning of section 152.102(f).

ALFRED R. DEANGELUS,
Acting Commissioner of Customs.

Approved: May 26, 1983.

JOHN M. WALKER, JR.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, June 17, 1983 (48 FR 27778)]

U.S. CUSTOMS SERVICE

General Notice

(T.D. 83-116)

Tariff Classification of Footwear; Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Correction.

SUMMARY: This document corrects an error in a document published in the Federal Register on Monday, May 23, 1983 (48 FR 22904), relating to the tariff classification of imported footwear.

FOR FURTHER INFORMATION CONTACT: Jesse V. Vitello, Regulations Control Branch, U.S. Customs Service (202-566-8237).

BACKGROUND

In FR Doc, 83-13803, appearing at page 22911, in the issue of May 23, 1983, the word "upper" was inadvertently included in the first line of item 4 under the sub-heading "Characteristics of a Foxing-like Band". This line should read as follows:

4. A foxing-like band must be applied or molded at the sole and must overlap the upper.

Dated: June 10, 1983.

B. JAMES FRITZ,
*Director, Regulations Control
and Disclosure Law Division.*

[Published in the Federal Register, June 16, 1983 (48 FR 27538)]

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Frederick Landis
James L. Watson

Bernard Newman
Nils A. Boe
Gregory W. Carman

Senior Judges

Herbert N. Maletz

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 83-53)

UNITED STATES STEEL CORP., REPUBLIC STEEL CORP., ET AL., PLAINTIFFS *v.* UNITED STATES, ET AL., DEFENDANTS, AND COMPANHIA SIDERURGICA PAULISTA (COSIPA) AND USINAS SIDERURGICAS DE MINAS GERAIS (USIMINAS), DEFENDANTS-INTERVENORS

Court No. 82-10-01361

Before WATSON, *Judge*.

COUNTERVAILING DUTY INVESTIGATION

The Court holds that if a practice alleged to be a subsidy is ended during the countervailing duty investigation, the ITA must follow the procedures of section 704 of the Trade Agreements Act of 1979 (19 U.S.C. § 1671c) and suspend the investigation unless the criteria of section 704 are not met.

The Court also holds that the extension of a low rail rate from the export segment of the steel industry to the entire steel industry did not end a subsidy.

[Remanded.]

(Decided June 2, 1983)

Law Department of United States Steel Corp. for plaintiff U.S. Steel Corp.

Cravath, Swaine & Moore (Joseph N. Sahid of counsel) for plaintiffs Republic Steel Corp., *et al.*

J. Paul McGrath, Assistant Attorney General (David M. Cohen, Branch Director, Civil Litigation Branch; Velta A. Melnbrensis and Francis J. Sailer, Attorneys, Civil Litigation Branch) for defendants.

WATSON, Judge: On a motion for review under Rule 56.1, this opinion deals with one facet of the judicial review of a recently concluded countervailing duty investigation involving steel imports from South Africa and Brazil. This facet involves the final determination made with respect to an alleged railroad rate subsidy granted by South Africa. For exports from South Africa, the assessment of countervailing duties depends solely on whether a subsidy has been provided in the sense of the "bounty or grant" identified in 19 U.S.C. § 1303.¹

The International Trade Administration of the Department of Commerce (ITA) made a preliminary determination on June 10, 1982, that the South African Transport Services (SATS), a government-owned corporation, set a railroad rate for exported steel which resulted in a subsidy because it was lower than the rate for domestic steel shipped under the same conditions. 47 Fed. Reg. 26,340, 26,341 (1982).

In its final determination, on August 23, 1982, the ITA found that SATS had, after the preliminary determination, made the lower rate available to domestic steel shipments. The administrative record indicates that this was done in July (AR 3863),² by means of telex messages to various port managers from the SATS general manager, and was later made retroactive to April 1, 1982 (AR 4265). The ITA then found that the rail rate was not a subsidy for shipments exported after April 1, 1982.

¹ South Africa is not a "country under the Agreement" within the meaning of Section 701(b) of the Trade Agreements Act (19 U.S.C. § 1671(b)). Therefore, the imposition of countervailing duties on its exports does not require an injury determination by the International Trade Commission.

² References to the administrative record are indicated by the prefix AR and the page number.

I

Plaintiffs, who were petitioners for the assessment of countervailing duties, first complain that this sequence of events required the use of the procedures of section 704 of the Trade Agreements Act of 1979 (19 U.S.C. § 1671c) and called for the suspension of the investigation and the emplacement of certain safeguards. The government argues that the plaintiffs waived their objections to the reaching of a final determination by not making a timely objection during the administrative proceedings.

The Court agrees with plaintiffs that these are not appropriate circumstances for applying the rule that courts will not hear procedural objections which could have been raised and corrected on the administrative level. The Court's examination of the record persuades it that plaintiffs did not have sufficient knowledge during the course of the investigation to place on them a duty to demand the use of section 704 procedures at that time. *Doyle v. United States*, 599 F.2d 984, 1001 (Ct. Cl. 1979), *cert. denied*, 446 U.S. 982 (1980).

As will be shortly explained, the obligation to follow the procedures of section 704, possibly leading to suspension of the investigation, first arises at the time when the ITA finds that the practice alleged to be, or preliminarily found to be, a subsidy, will either be ended by a proposed agreement or has already been ended during the investigation. That finding is not accessible to petitioners until it is reached and announced by the ITA. Only then can an obligation be fairly placed on petitioners to demand the use of the suspension procedures. If, as here, the finding mistakenly leads to a final determination, rather than being used as a starting point for the procedures of section 704, the final determination is the first event to which a procedural objection can be voiced and this judicial review is the first meaningful occasion for that objection to be expressed.

II

We now move to the substantive dispute about the nature and use of Section 704. Plaintiffs claim that representations made by officials of a foreign government that a practice, (earlier alleged or found to be a subsidy) has been eliminated, represents the agreement to eliminate the subsidy referred to in section 704(b) (19 U.S.C. § 1671c(b)) and requires the ITA to follow the procedures of that section.

The government's response has two prongs. First, it argues that section 704 comes into play only after negotiations have taken place and the ITA is presented with a proposed agreement to end a subsidy. Second, it argues that even in that event, the ITA has complete discretion to choose between suspending the investigation or continuing it to a final determination.

Both sides seek support for their views in the language of section 704 and in the legislative history. The government reads the law as creating a narrow and completely discretionary alternative to the continuation of the investigation. It reads the history as speaking of suspension with a cautionary tone bordering on disfavor. The plaintiffs read the law as mandating suspension for the protection of domestic petitioners in cases where an alleged subsidy is ended during the investigation.

The government takes the position that it has actually helped plaintiffs more by its final determination than by suspending the investigation. It points out that, even though it found that the subsidy was no longer in effect after April 1, 1982, it continued the suspension of liquidation of entries (which had begun after the preliminary determination). It did so by characterizing the result as an affirmative determination with a zero amount of subsidy after April 1, 1982. Thus, it assertedly left all entries subject to the retroactive assessment of countervailing duties if a later administrative review under section 751 (19 U.S.C. § 1675) should reveal the resumption of the subsidy.

The Court now proceeds with its analysis of the law, dealing at each appropriate point with the arguments of the parties. The analysis leads to the conclusion that the events of this investigation required the ITA to use the procedures of section 704, if it found that the subsidy had ended during the investigation.

Section 704 appears prominently between the provision for preliminary determinations in section 703 (19 U.S.C. § 1671b) and the provisions for final determinations in section 705 (19 U.S.C. § 1671d).

In it, we see an initial grant of authority to the ITA to suspend the investigation, in subsection (b) (19 U.S.C. § 1671c(b))³ when the foreign interests⁴ agree to eliminate the subsidy. The language "may suspend the investigation" is quickly seen to be, not the unlimited power to continue investigations, but simply the power to reject an agreement to eliminate a subsidy which does not meet the requirements that the resulting suspension of investigation leave the petitioners in a secure position. Thus, the initial grant of authority to suspend must be read in conjunction with subsection (d), (19 U.S.C. § 1671c(d))⁵ which forbids the acceptance by the ITA of

³(b) *Agreements to eliminate or offset completely a subsidy or to cease exports of subsidized merchandise.* The administering authority may suspend an investigation if the government of the country in which the subsidy practice is alleged to occur agrees, or exporters who account for substantially all of the imports of the merchandise which is the subject of the investigation agree—

(1) To eliminate the subsidy completely or to offset completely the amount of the net subsidy, with respect to that merchandise exported directly or indirectly to the United States, within 6 months after the date on which the investigation is suspended, or

(2) To cease exports of that merchandise to the United States within 6 months after the date on which the investigation is suspended.

⁴For ease of discussion the term "foreign interests" is used to describe the government of the country in which the subsidy practice is alleged to occur and the exporters who account for substantially all of the imports under investigation.

⁵(d) *Additional rules and conditions.*

an agreement by the foreign interests unless the resulting suspension of the investigation is "in the public interest" and the agreement can be effectively monitored. This already implies strongly that the elimination of a subsidy will normally result in suspension of the investigation. It is as if Congress had said that investigations *shall* be suspended, *provided* that certain conditions are met, but chose to express its desire in a more circuitous way. When we add to this relation between subsections (b) and (d) the elaborate notification, consultation, and comment provisions of subsection (e),⁶ the painstaking provisions of subsection (f)⁷ regarding the complex effects of suspension, the strong provisions in subsection (i)⁸ for quick resumption of the investigation and the assessment of penalties in

(1) *Public interest; monitoring.* The administering authority shall not accept an agreement under subsection (b) or (c) unless—

(A) It is satisfied that suspension of the investigation is in the public interest, and

(B) Effective monitoring of the agreement by the United States is practicable.

⁶(e) *Suspension of investigation procedure.* Before an investigation may be suspended under subsection (b) or (c) the administering authority shall—

(1) Notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation,

(2) Provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced (including any action required of foreign governments), and of how the agreement will meet the requirements of subsections (b) and (d) or (c) and (d), and

(3) Permit all parties to the investigation to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A).

⁷(f) *Effects of suspension of investigation.*

(1) *In general.* If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c), then—

(A) It shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 703(b) [19 USC § 1671(b)] with respect to the merchandise which is the subject of the investigation, unless it has previously issued such a determination in the same investigation,

(B) The Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) The suspension of investigation shall take effect on the day on which such notice is published.

(2) *Liquidation of entries.*

(A) *Cessation of exports; complete elimination of net subsidy.*—If the agreement accepted by the administering authority is an agreement described in subsection (b), then—

(i) Notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of merchandise which is the subject of the investigation, shall not be suspended under section 703(d)(1) [19 USC § 1671(d)(1)],

(ii) If the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) The administering authority shall refund any cash deposit and release any bond or other security deposited under section 703(d)(1) [19 USC § 1671(d)(1)].

⁸(i) *Violation of agreement.*

(1) *In general.* If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

(A) Suspend liquidation under section 703(d)(1) [19 USC § 1671(d)(1)] of unliquidated entries of the merchandise made on or after the later of—

(i) The date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) The date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d), was first entered, or withdrawn from warehouse, for consumption,

(B) If the investigation was not completed, resume the investigation as if its affirmative preliminary determination under section 703(b) [19 USC § 1671(b)] were made on the date of its determination under this paragraph,

(C) If the investigation was completed under subsection (g), issue a countervailing duty order under section 706(a) [19 USC § 1671(e)(a)] effective with respect to entries of merchandise the liquidation of which was suspended, and

(D) Notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) *Intentional violation to be punished by civil penalty.*—Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedure, as the penalty imposed for a fraudulent violation of section 592(a) of this Act. [19 USC § 1592(a)].

certain cases, the exercise of pure discretion by the ITA in this area is seen to be unreasonable on its face.⁹

It is impossible to believe that Congress provided this prominent and exhaustively detailed provision for use as a matter of unfettered discretion. The very emphasis placed on careful limitations on the authority to suspend shows that there was an expectation that the authority *had* to be used to deal with the elimination of alleged subsidies. The major concern of Congress was that it not be used when those eliminations somehow still jeopardized the public interest or the interests of domestic petitioners. By stressing those factors which justify denying suspension and by showing a clear concern for maintaining strong safeguards even after suspension, Congress revealed an expectation that suspension would be the normal and proper response to the elimination of a practice alleged to be a subsidy.

In approaching the interpretation of this provision, it can be assumed that Congress wrote it with the general expectation that most eliminations of subsidies would come about by means of a conventional process of negotiation and agreement. However, the Court finds it unreasonable to read this provision as operating only in response to a *proposal* to eliminate a subsidy in the future and not in response to the purported actual elimination of a subsidy in the course of the investigation. What this would mean, in the Court's view, is that the very situation which most directly accomplishes the legislative purposes, results in an avoidance of the careful and comprehensive procedures set up by Congress, both to organize the suspension of investigations and to leave petitioners in a secure position when investigations are suspended.

In the enactment of this provision the Court sees evidence of a Congressional intention to require that investigations be suspended, rather than continued, whenever the end of a subsidy is accomplished during the investigation. This intention is visible in the act itself, and in the legislative history. This provision is intended for use in those instances in which the focus of attention shifts from determining whether a certain practice is a subsidy or from measuring it, and moves to determining whether the practice is coming to an end.

An important point to be made is that the provision under discussion was enacted to make suspension of investigations *more* available than had previously been the case. Formerly, under section 303 of the Tariff Act of 1930 (19 U.S.C. § 1303) the Secretary of

⁹This brief overview of section 704 does not include other portions which are not directly relevant here, other than perhaps to show the exhaustive attention that Congress gave to suspension. Reference is made to subsection (a) (19 U.S.C. § 1671c(a)) providing for termination of the investigation when the petition is withdrawn; subsection (c) (19 U.S.C. § 1671c(c)) which gives a highly detailed alternative method of suspension by agreement to eliminate the *injurious effect* of a subsidy; the latter portion of subsection (f) (19 U.S.C. § 1671c(f)(3)) in conjunction with subsection (g) which operates to continue, in a provisional way, an investigation which has been suspended; subsection (h) (19 U.S.C. § 1671c(h)) which provides administrative review of the suspension, and subsection (j) (19 U.S.C. § 1671c(j)) which maintains the relevance of merchandise entered while a suspension is in effect, if the investigation is later resumed.

the Treasury could either terminate the investigation when a petition was withdrawn, or waive the imposition of countervailing duties after the investigation was concluded. The suspension of ongoing investigations was not allowed.

This fundamental point leads one to conclude that, far from looking with disfavor on the suspension of investigations, Congress saw it as a useful and necessary practice. A relatively full excerpt from the Report of the Senate Committee on Finance serves to convey a sense of the legislative intentions on this provision.

Section 704 would also establish criteria and procedures for suspending an investigation upon acceptance of an agreement by a foreign government or exporters to take remedial action. The suspension provisions would implement Article 4 (5) and (6) of the Agreement for the United States.

The suspension provision is intended to permit rapid and pragmatic resolutions of countervailing duty cases. However, suspension is an unusual action which should not become the normal means of disposing of cases. The committee intends that investigations be suspended only when that action serves the interests of the public and the domestic industry affected. For this reason, the authority to suspend investigations is narrowly circumscribed. In particular, agreements which provide for any action less than elimination of the subsidy, complete offset of the net subsidy amount, or cessation of exports can be accepted only in extraordinary circumstances. That is to say, very rarely. Furthermore, the requirement that the petitioners be consulted will not be met by pro forma communications. Complete disclosure and discussion is required.

The committee intends that no agreement be accepted unless it can be effectively monitored by the United States. This will require establishment of procedures under which entries of merchandise covered by an agreement can be reviewed by the authority and by interested parties. Adequate staff and resources must be allocated for monitoring to insure that relief under the agreement occurs.

S. Rep. No. 96-249, 96th Cong., 1st Sess. 54 (1979).

The basic intention expressed above is to permit the "rapid and pragmatic resolution of countervailing duty cases" in response to agreements by the foreign interests "to take remedial action." What could be more rapid, pragmatic and remedial than the immediate cessation of the practice alleged to be a subsidy? The reservations or uneasiness expressed by the Committee are directed to suspensions of investigations which may not serve the interests of the public and the domestic industry. Consequently, it would be a distortion of the legislative intention to administer the act in a manner which is inconsistent with those interests. The tight controls written into the law and the discretion given to the ITA were designed, not to diminish the use of section 704, but primarily to safeguard the interests of the domestic petitioners in those instances when events required the use of the procedures of section

704. The law is preoccupied with controls on the acceptance of an agreement because Congress was concerned with unjustified suspension harming the domestic petitioners. This does not mean that rejection of suspension is uncontrolled or can be unreasoned.

In order for section 704 to have its intended usefulness, it must be followed by the ITA whenever the proper conditions for suspension are present and those conditions include both actual elimination of subsidies and offers to eliminate them *in futuro*.

Otherwise, the provision for suspension and the safeguards it provides for the petitioners will be thwarted. Why should a foreign interest offer an agreement to end a subsidy, thus inviting comment, monitoring, quick resumption of the investigation and penalties for intentional violation, when it can present the end of the subsidy as a *fait accompli* during the investigation, obtain a negative determination and achieve an entirely unimpeded resumption of its exportations? All it need endure to achieve this result is a short additional period (up to the time of the final determination) during which estimated duties will have to be paid. If it should again subsidize in the same manner, an entirely new investigation would have to be started.

Unless suspension of the investigation takes place for both actual eliminations of subsidies and promises to end them, the following unacceptable situations arise: the wasteful and unnecessary continuation of investigations, a negative determination (if the subsidy is indeed eliminated) without any of the protections intended by Congress, i.e., no consultation or comment, no articulated decision by the ITA, no monitoring, no speedy resumption and no penalties for intentional violation.

If anything, the elimination of a subsidy by *fait accompli*, comes within the provision of section 704 by pure *a fortiori* reasoning. If the procedures of section 704 must be followed in response to a proposed agreement (the more extreme case) they must certainly be followed in response to a representation of actual elimination (the lesser case).

The unusual step taken here by the ITA in maintaining the suspension of liquidation despite the finding that the subsidy had ended is not an acceptable alternative to the safeguards of section 704. It is a makeshift arrangement of questionable legitimacy when one considers the requirement that suspension of liquidation be ended when there is a negative final determination. 19 U.S.C. § 1671d(c).¹⁰ The characterization of this determination as affirma-

¹⁰ (2) *Issuance of order; effect of negative determination.* If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue a countervailing duty order under section 706(a) [19 USC § 1671e(a)]. If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) Terminate the suspension of liquidation under section 703(d)(1) [19 USC § 1671(d)(1)], and

(B) Release any bond or other security and refund any cash deposit required under section 703(d)(2) [19 USC § 1671b(d)(2)].

tive, but of a zero amount after April 1, 1982, is inaccurate. It is more correctly described as a determination that a subsidy was not being provided after April 1, 1982, i.e., a negative determination. *Republic Steel Corp. v. United States*, 4 C.I.T. —, (Slip Op. 82-55, July 15, 1982).

Moreover, the reliance on a future annual review proceeding as a safeguard is misplaced because in the case in which a subsidy is eliminated *in toto*, and no period of subsidy is left on which to improvise a continuation of suspension of liquidation, the result must be a negative determination, for which there will be no annual review.

If, at any time before the end of the investigation, the ITA finds that the foreign interests have (since the commencement of the investigation) acted to end or offered to end the practice alleged or preliminarily found to be a subsidy, then the ITA *must* suspend the investigation of that practice unless it can give a good reason for continuing the investigation. It has the discretion to continue the investigation if it can articulate reasons which are sanctioned by section 704.

With these considerations in mind, it is plain that the basic language of section 704(b) (19 U.S.C. § 1671c(b)) cannot be given a simplistic reading when it states that the ITA "may suspend an investigation if the government of the country in which the subsidy practice is alleged to occur agrees * * * to eliminate the subsidy completely." The interaction of the other subsections and the force of the legislative intention, as well as the practical considerations earlier discussed, indicate that this is not a grant of unfettered discretion to suspend and is not restricted to agreements operating *in futuro*.¹¹

If indeed we have here a situation in which Congress did not literally address the circumstance of a foreign interest ending or purporting to end the subsidy during the investigation, then the Court has an obligation to extend the unmistakable legislative intention and to prevent the development of absurdities which tend to undermine the operation of the law and violate its spirit. *Asahi Chemical Industry Company, Ltd. v. United States*, 4 CIT —, 548 F. Supp. 1261 (1982). As was stated in that opinion at page 1267:

If a reading of a statute leads to a result which is "contrary to the Congressional intent and leads to absurd conclusions," it is to be rejected. *United States v. Bryan*, 339 U.S. 323, 338 (1950). "No rule of construction necessitates * * * acceptance of an interpretation resulting in patently absurd consequences." *United States v. Brown*, 333 U.S. 18, 27 (1948).

¹¹ The government also argues that the ITA has the same sort of alternative authority here that the President was found to have in negotiating duty increases in *Aimcee Wholesale Corp. etc. v. United States*, 60 CCPA 1, 468 F. 2d 202 (1972). However, the statutory provisions and all the other circumstances involved in *Aimcee* were so different from those involved here that a comparison between the two cases is simply out of the question.

The Court's views on the use of section 704 lead to the conclusion that the ITA should have followed those procedures if it thought that the rail rate subsidy had ended. The minor difficulty of putting the perceived *fait accompli* in a form which is also an undertaking as to future conduct and which can be the subject of the consultation and comment required, is easily surmounted. The attempt at elimination of the subsidy must already imply a willingness to maintain the elimination. Otherwise it is obviously an illusory expedient. Therefore, if the foreign interests are invited or required to present the represented elimination of a subsidy in the form of an undertaking as to future conduct, they are not being forced to agree to anything which is not already implicit in their conduct. This would merely be a requirement that they present their action in the form required by the law.

During 1982 there were other countervailing duty investigations which involved the SATS rail rates, and the parties here have both sought support from the manner in which those investigations were conducted and concluded. The government points to the final determination in an investigation of deformed steel bars for concrete reinforcement ("rebars") from South Africa in which it was determined that lower rail rates for export rebars were ended effective April 1, 1982, and did not represent a subsidy after that date. 47 Fed. Reg. 47,902 (1982). The Court is not persuaded that this represents anything other than the same misunderstanding of statutory procedures found in this case.

Plaintiffs point to investigations of prestressed concrete steel wire strand and steel wire rope from South Africa which were suspended under section 704 (47 Fed. Reg. 22,137-39 and 47 Fed. Reg. 54,130-32 (1982)) as examples of the correct procedure. However, since those cases involved conventional negotiated agreements they do not illustrate the conduct required when agreement by unilateral action is involved.

In brief, the contemporaneous investigations do not provide precedent or guidance for the situation confronting us here. That guidance is derived from the statute itself, the legislative history and the compelling necessity of effectuating the legislative intentions.

III

The Court must also discuss the ITA's finding that the rail subsidy had ended. Assuming that it had led to the suspension of the investigation, that suspension would have been judicially reviewable under 19 U.S.C. § 1516a(a)(2)(A). In the interest of guiding the ITA in the renewed investigation which this opinion requires, the Court must express its disagreement with the conclusion that the rail subsidy had been eliminated.

The finding that the lower rate for export steel had been extended to all steel shipments made under the same conditions was

insufficient to support a conclusion that the subsidy had been eliminated. That conclusion can be reached only if it is found that the lower rate is available to *all* products shipped under the same conditions. The general availability of such a rate, coupled with a finding that it is a profitable rate, justified by demonstrable economies of transportation, may then serve to support a finding that the subsidy does not exist. *Carlisle Rubber and Tire Co. v. United States*, 5 CIT —, Slip Op. 83-49, May 18, 1983.

The countervailing duty law operates in cases where a special advantage or preferential treatment is given to a class of persons. Availability of special treatment to an entire industry or region is still the grant of an advantage or preference under the law. *A.S.G. Industries, Inc. v. United States*, 67 CCPA 11, C.A.D. 1237, 610 F.2d 770 (1979); *ASG Industries, Inc. v. United States*, 67 CCPA 31, C.A.D. 1238 (1979); *ASG Industries, Inc. v. United States*, 82 Cust. Ct. 101, C.D. 4794, 467 F. Supp. 1200 (1979); *Michelin Tire Corporation v. United States*, 2 CIT 143 (1981); *Macalloy Corp. v. United States*, 1 CIT 199 (1981).

If the lower rate was a preference when it was available to export steel only, it remains a preference when it has been made available to all steel. The distinction between steel and other products is suspect, particularly when the investigation showed that the SATS rate schedule "generally provides railroad rates for shipments destined for export that are lower than domestic rates." 47 Fed. Reg. 39,380.

In the administrative proceeding, much attention was paid to the subject of cost justification of the lower rate under scrutiny, i.e., that the rate was justified by the lower costs of the steel shipments involved. However, the concept of cost justification is subordinate to the rule of general availability and, by itself, within an industry, is inadequate to show the absence of a subsidy. General availability means that what is available is accessible to all who are similarly situated. For a railroad rate this means available for the shipment of any products which offer similar economies of transportation. Cost justification of one rate for the product of an industry as opposed to another rate within that same industry is insufficient because it leaves unanswered the question of whether the rate sought to be justified should be more generally available. This means that for cost justification to work as a justification of a lower rate it must be shown to operate without making industry distinctions. In that frame of reference it is simply a method of confirming the *bona fides* of a rate which is first justified by being generally available.

The government points to the definition of subsidy in the Trade Agreements Act of 1979 (19 U.S.C. § 1677(5))¹² as giving the term

¹² (5) *Subsidy*. The term "subsidy" has the same meaning as the term "bounty or grant" as that term is used in section 303 of this Act [19 USC § 1303], and includes, but is not limited to, the following:

Continued

the same meaning as the subsidies described in Annex A to the Code on Subsidies and Countervailing Duties.¹³ It then argues that Annex A lists among export subsidies only those internal transport charges on export shipments which are provided on terms more favorable than for domestic industry. This argument cannot be accepted. First, the definition of subsidy is open-ended. The statute expressly states that the term "includes but is not limited to" the examples which follow. Second, although the Code concentrates on export subsidies, it does recognize subsidies which do not have an export focus. Third, on its own terms the Annex illustration does not indicate that the favorable nature of the transport charges is displayed only by comparison within the same industry. It is more appropriate to harmonize this example with our law by finding a subsidy when the transport charges are on terms more favorable than for *any comparable* domestic shipments. Fourth, the statutory provision goes on to list the provision of services and the assumption of distribution costs as domestic subsidies which are subsidies within the meaning of the Trade Agreements Act if provided, *inter alia*, to an industry or even a group of industries. It is plausible to consider a preferential transport rate as falling within these latter categories or, at the very least, as being so closely analogous that it would be impossible to think that its availability to an entire industry rather than just the export segment could save it from being a countervailable subsidy.

IV

For the reasons earlier expressed, the Court concludes that for steel exported after April 1, 1982, a final determination should not have been reached if the ITA was of the opinion that the rail rate preference given to that steel had been eliminated during the investigation. The proper course was to follow the procedures of section 704 (19 U.S.C. § 1671c) and suspend the investigation of those subsidies found to have been eliminated. Nevertheless, because the Court also finds that the rail rate subsidy was *not* eliminated

(A) Any export subsidy described in Annex A to the Agreement (relating to illustrative list of export subsidies).

(B) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned, and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

(i) The provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations.

(ii) The provision of goods or services at preferential rates.

(iii) The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry.

(iv) The assumption of any costs or expenses of manufacture, production, or distribution.

¹³

Annex

Illustrative List of Export Subsidies

• • • • •

(c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favorable than for domestic shipments.

• • • • •

within the meaning of the law, it remands the matter for a continuation of the investigation on that subject.

During this renewed investigation, for steel exported on or after April 1, 1982, the ITA shall maintain the suspension of liquidation ordered in the preliminary determination of June 10, 1982, and shall require the deposit of estimated duties in the amounts set out in the preliminary determinations for products exported after April 1, 1982. 47 Fed. Reg. at 26,343. This will restore matters to the condition in which they were following the preliminary determination. It will allow the investigation to proceed from that point to a final determination or to a suspension of the investigation, in either event, taking into account the views expressed in this opinion.

JAMES L. WATSON,
Judge.

Dated: June 2, 1983.

New York, New York.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED Item No. and Rate	HELD Item No. and Rate	BASIS	PORT OF ENTRY AND MERCHANDISE
P83/148	Ford, J. June 6, 1983	British Steel Corp.	78-7-01330, etc.	Item 608.46 7%	Item 608.71 0.28¢ per lb.	Agreed statement of facts	Chicago Steel wire rod
P83/149	Ford, J. June 6, 1983	Gould Brown Boveri	81-5-00612	Item 683.90 4%	Item 851.60 Free of duty pursuant to 47 F.R. 43991	Agreed statement of facts	New York Not stated
P83/150	Ford, J. June 6, 1983	Jimlar Corp.	79-4-00732	Item 700.60 90% Dutiable on basis of American selling price at \$7.50 per pair less 2%, net, packed	Item 700.70 7.5% Dutiable on basis of export value at invoiced unit value	Agreed statement of facts	San Juan Ladies footwear
P83/151	Ford, J. June 6, 1983	Logix Enterprises, Ltd.	82-5-00650	Item 688.40 5.5%	Item A676.15 Free of duty pursuant to GSP	Agreed statement of facts	New York Home computers; products of eligible beneficiary country
P83/152	Ford, J. June 6, 1983	Sanyo Electric Inc.	82-6-00831	Merchandise classified as watch or clock movements and assessed duty at various rates under items 720.02, 720.14, 720.16, 720.18, etc.	Item 678.50 5%, 4.8%, or 4.7% depending on date of entry (merchandise marked "A") Item 685.24 9.3% (merchandise marked "B") Item 688.40 3.5% (merchandise marked "C")	Texas Instruments Inc. v. U.S. ICIT 236 (1981) aff'd 3/25/82	New York Solid state timing devices

P83/153	Boe, J. June 6, 1963	A & A International Inc.	81-11- 01612-S	Merchandise separately classified as watch or clock movements and assessed with duty at \$0.67 each, under item 716.18, and as cases, under item 720.34 at 12.7%	Item 686.36 5.3%	Texas Instruments, Inc. v. U.S. CIT 236 (1981)	Los Angeles Solid-state clocks; entireties	LCD calendar
P83/154	Boe, J. June 6, 1963	Doherty Barrow of Texas, Inc.	75-6-01537	Item 609.03 8.5% (merchandise marked "A") Item 609.13 8% (merchandise marked "B")	Item 642.93 0.024 per lb. (merchandise marked "A" and "B")	Doherty-Barrow of Texas, Inc. v. U.S. 3 CIT 228 (1982)	Houston Steel cotton ties in coils, and buckles	
P83/155	Boe, J. June 6, 1963	Doherty Barrow of Texas, Inc.	75-11-02936	Item 609.03 8.5% (merchandise marked "A") Item 609.13 8% (merchandise marked "B")	Item 642.93 0.024 per lb.	Doherty-Barrow of Texas, Inc. v. U.S. 3 CIT 228 (1982)	Houston Steel cotton ties in coils and buckles	
P83/156	Boe, J. June 6, 1963	Doherty Barrow of Texas, Inc.	76-6-01356	Item 609.03 8.5% (merchandise marked "A")	Item 642.93 0.024 per lb.	Doherty-Barrow of Texas, Inc. v. U.S. 3 CIT 228 (1982)	Houston Steel cotton ties in coils	
P83/157	Boe, J. June 6, 1963	Interpump—Div. of Dart In- dustries, Inc.	81-10-01466	Merchandise classified under items 715.05, 716.18, 720.24, 720.28, 740.35, 774.55, 720.30 U.S. components classified under item 807.00 Free of duty	Item 686.36 5.1% with an allowance under item 807.00 for U.S. components	Texas Instruments, Inc. v. U.S. (C.A.D. 1244)	Chicago Not stated	

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
				Item No. and Rate	Item No. and Rate	Item No. and Rate	Item No. and Rate		
P83/158	Boe, J. June 6, 1983	RCA Corporation	81-1-00073	Item 685.40 5.5%	Item 685.40 5.5%	Item 685.40 5.5%	Item 685.40 5.5%	Texas Instruments, Inc. v. U.S. ICT 236 (1981) aff'd 3/ 25/82	Chicago; San Francisco Video cassette recorders which contain clock/timers

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R83/466	Re, C.J. June 6, 1983	Allied Stores Int'l. Inc.	79-11-01716	Export value	Appraised values shown on entry papers less addi- tions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated
R83/467	Re, C.J. June 6, 1983	American NTN Bearing Manufacturing Corp.	77-11-04783	Export value	Appraised values specified on entry papers less ad- ditions included to re- flect currency revalu- ation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Chicago Not stated
R83/468	Re, C.J. June 6, 1983	Mamiye Bros. Inc.	76-5-01072, etc.	Export value	Appraised values shown on entry papers less addi- tions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R83/469	Re, C.J. June 6, 1983	Metasco, Inc.	79-4-00692	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated
R83/470	Re, C.J. June 6, 1983	National Silver Company	76-5-01164, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New Bedford (Boston) Not stated
R83/471	Re, C.J. June 6, 1983	Starlight Trading, Inc.	78-4-00587, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated
R83/472	Re, C.J. June 6, 1983	Starlight Trading, Inc.	78-5-00783	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated
R83/473	Ford, J. June 6, 1983	Perkin Elmer Corp.	78-11-02037	Export value	Invoice unit prices, net, packed representing correct dutiable value—said prices represent exporter's list prices less 35% discount	Agreed statement of facts	New York Electrical instruments and accessories
R83/474	Landis, J. June 6, 1983	Topp Electronics, Inc.	78-5-01325	Constructed value	Values specified on entry papers by liquidating officer excluding one-half of amount added for assists as set forth in attached schedule of protests	Agreed statement of facts	Miami; Los Angeles Not stated

R83/475	Watson, J. June 6, 1983	A & A Trading Corp.	R59/10631, etc.	Export value (articles described on schedules A and B)	F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and the appraised values (articles described on Schedule A) Appraised values shown on entry papers less amounts attributable to buying commission (ex- porter's commission, or purchasing agent's com- mission) (articles de- scribed on schedule B)	A & A Trading Corp. v. U.S. (C.D. 4472)	Boston Binoculars and 9 volt bat- teries (articles A) All merchandise except that described on sched- ule A, which had buying agent's commission in- cluded as part of ap- praised values (articles described on schedule B)
R83/476	Watson, J. June 6, 1983	Arrow Trading Co.	R66/24849, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	New York 9 volt batteries
R83/477	Watson, J. June 6, 1983	Astra Trading Corp.	R60/22778, etc.	Export value	F.o.b. unit invoice prices less 7.5% thereof	Agreed statement of facts	New York Binoculars
R83/478	Watson, J. June 6, 1983	Bert Friedberg Co.	259905A, etc.	Export value	F.o.b. invoice unit prices as shown on entry docu- ments, plus 20% of dif- ference between f.o.b. unit invoice prices and appraised values, net, packed	Agreed statement of facts	San Francisco Binoculars
R83/479	Watson, J. June 6, 1983	Broadway Export Trading Co.	R65/5290, etc.	Export value	F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and ap- praised values	Agreed statement of facts	New York Transistor radio, accesso- ries and parts; entreties
R83/480	Watson, J. June 6, 1983	Leslie B. Canion s/c Lefco Int'l. Inc.	R62/1177, etc.	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Houston Transistor radio, accesso- ries and parts; entreties
R83/481	Watson, J. June 6, 1983	Leslie B. Canion s/c Lefco Int'l. Inc.	R63/8125, etc.	Export value	F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and ap- praised values	Agreed statement of facts	Houston Transistor radio, accesso- ries and parts; entreties

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R83/482	Watson, J. June 6, 1983	S.S. Kreige Co.	R65/6877, etc.	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Transistor radios, accessories and parts, entireties
R83/483	Watson, J. June 6, 1983	Mark Schwartz et al.	R59/17651, etc.	Export value	F.o.b. unit invoice prices less 7.5% thereof	Agreed statement of facts	Gloves, scarves, cotton wearing apparel
R83/484	Watson, J. June 6, 1983	Shalom & Co.	R63/2773, etc.	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Transistor radios, accessories and parts, entireties

Appeals to U.S. Court of Appeals for the Federal Circuit

APPEAL 83-1067—Nichimen Co., Inc., v. The United States—ELECTRICAL EQUIPMENT—Appeal from Slip Op. 83-28 filed on May 31, 1983.

APPEAL 83-1085—Associated Consumers v. United States—PIPE TOOLS (EXCEPT CUTTERS), WRENCHES, AND SPANNERS, AND PARTS THEREOF—TSUS AS MODIFIED BY PROCLAMATION No. 4707—Appeal from Slip Op. 83-30, filed May 27, 1983.

PETITION FOR WRIT OF CERTIORARI FILED WITH SUPREME COURT

(February 16, 1983)

APPEAL 82-16—International Fashions v. The United States, et al.—TRADING WITH THE ENEMY ACT CLAIMS IN CONSEQUENCE OF P.P. 4074, SO-CALLED 1971 SURCHARGE ACTION—Appeal from Slip Op 81-122, filed on February 25, 1982, Affirmed December 13, 1982, Supreme Court No. 82-1403, October Term 1982. Petition filed by appellant denied May 23, 1983.

APPEAL 82-17—Alcan Sales, Div. of Alcan Aluminum Corp. v. The United States—TRADING WITH THE ENEMY ACT CLAIMS IN CONSEQUENCE OF P.P. 4074, SO-CALLED 1971 SURCHARGE ACTION—Appeal from Slip Op. 81-121 filed February 25, 1982, Affirmed December 13, 1982, Supreme Court No. 82-1384, October Term 1982, Petition filed by appellant denied May 23, 1983.

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